

AMENDED AND RESTATED MEMORANDUM OF AGREEMENT
ACMS, INC.
JOINT USE OF SUMTER COUNTY SOLID WASTE FACILITY TO ACCESS
CLASS I SOLID WASTE LANDFILL

This Amended and Restated Memorandum of Agreement (the "Agreement") made this 28th day of September, 20120, by and between the County of Sumter, State of Florida (the "County"), and ACMS, Inc., ("ACMS")

WITNESSETH:

WHEREAS, ACMS is the fee simple owner of certain real property located in Sumter County, Florida, described in Exhibit "A", attached hereto and incorporated herein (the "PProperty"), and;

WHEREAS, on the 14th day of August 2007, ACMS received conditional use approval by the Board of County Commissioners (BOCC) for the development of an 80 acre construction and demolition landfill (C & D) ~~facility~~ (C2007-0001) on the Property, and;

WHEREAS, on the 22nd day of January, 2008, ACMS, received operating permit approval by the BOCC for the operation of a Construction & Demolition Material Disposal Facility (OP2007-001) ("C&D Facility"), and;

WHEREAS, on the 22nd day of January, 2008, ACMS entered into a Memorandum of Agreement with the BOCC for the use of the Sumter County Solid Waste Facility ("SCSWF") to access a C&D Facility (the "CD Agreement"), and;

WHEREAS, pursuant to the CD agreement, ACMS contributed the sum of \$33,000.00 toward the replacement of the scales located on BOCC property in exchange for certain rights of access, and

WHEREAS, -ACMS Pproperty intended for use as a Construction and Demolition Landfill was has been annexed into the City of Bushnell, and;

WHEREAS, ACMS obtained is now seeking a permit for a Class I Solid Waste Landfill in lieu of a C&D Facility, and;

WHEREAS, ~~an~~ an agreement is was needed to supersede and replace the CD Agreement, and;

WHEREAS, ACMS and the County entered into a Memorandum of Agreement on or about September 28, 2010, find that this Agreement, which demonstrated evidencing the cooperation in the operation of ACMS' Class I Solid Waste Landfill between the is in the best interest of both PParties.

WHEREAS, the County and ACMS wish to enter into this Amended and Restated Memorandum of Agreement to address changes to the original Memorandum of Agreement, as such changes have become necessary and are in the best interests of both parties, and;

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WHEREAS, the County provided a non-exclusive revocable license agreement to ACMS of Sumter, LLC and ACMS on June 12th, 2012 for the purposes of egress to CR 529A and subsequently made modifications on September 25th, 2012 to allow the ingress and egress of the Class I Landfill traffic with CR 529A in lieu of CR 529 as shown in Exhibit "B" and;

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WHEREAS, the change in Class I Landfill traffic flow with CR 529 altered the traffic study and mitigation requirements of the prior agreement and;

WHEREAS, it is the intent of the County and ACMS that this Amended and Restated Memorandum of Agreement replace and supersede the original Memorandum of Agreement entered into by and between the County and ACMS on ~~September~~ September 28, 2010, in all respects.

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NOW THEREFORE, in consideration of the foregoing, accepting the above WHEREAS clauses as true and with the intention that they will be legally bound, the Parties agree that the following terms and conditions shall apply to utilization of specified Sumter County Property ~~the SCSWF by Sumter County and by~~ ACMS:

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1. County agrees to lease to ACMS ~~a~~ the area of County Property as depicted in Exhibit "C" which is currently used by the County as its citizen drop off area (CDA) northern portion of Sumter County Parcel ID# J22-005, as specifically identified in Exhibit "C" (the "Leased Property") for the for the purpose of ACMS' use as the new location for its scales and scalehouse to serve its Class I Landfill re location of its scales from the SCSWF. The terms of this lease shall be identical to the lease terms contained in that certain Lease Agreement between Sumter County and ACMS of Sumter, LLC, executed on or about June 12, 2012, said terms being fully incorporated herein, *in hanc verba*.

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~~1.2. ACMS shall terminate its use of the Joint access shall be across the Sumter County Solid Waste Facility (SCSWF) SCSWF scales and along the west boundary of County property as depicted shown in Exhibit "B". ACMS may shall relocate the existing SCSWF scales, or install new scales, on the Leased Property depicted in Exhibit "C" to allow for ingress and egress to ACMS' Class ACMS' Class I Solid Waste Landfill.~~

~~2.3. Within 90 days of the end of the ACMS' first year of operation of the Class I Landfill, Within ninety (90) days of the end of ACMS's first year of the operation of the Class I Landfill execution of this Agreement, ACMS shall employ an Engineering Firm who will determine the following:~~

- a. The maximum vehicular scale capacity per hour and the actual scale use at the time of the study.
- b. The peak capacity and actual hour traffic volume.
- c. The number, type of vehicles, and destination (end user) of traffic crossing the scales.
- d. Peak hour vehicular traffic shall be weighted in the form of Equivalent Single Axle Loads (ESALs).

The data obtained shall be utilized to calculate the pro-rata share of ACMS and other end users, current and future.

~~3-4.~~ At the County's discretion, improvements may be undertaken to upgrade CR 529 A from C-470 south to the northeast property line of Exhibit "A", until such time as the road segment and contiguous right-of-way transitions to the control of the City of Bushnell. All end users shall reimburse the County, within 30 days of the County's invoicing of the pro-rata share (as defined in #32) of the said CR 529 A improvements.

~~4. ACMS shall be solely responsible for the improvement of the existing unimproved internal SCSWF roadway running along the west side of the facility commencing at the southerly limit defined in #3 above south to Class I Landfill facility entrance. The minimum improvement shall consist of a milled asphalt haul road no less than the width shown in Exhibit "B". This improvement shall be completed before any site construction for the ACMS Class I Landfill commences. ACMS shall be solely responsible to maintain the aforementioned internal roadway.~~

5. ACMS shall construct a turn lane on C-470 at its intersection with CR 529A to the County's satisfaction, if warranted by a traffic study prepared by an engineering firm retained by ACMS and approved by County. This traffic study, limited to the traffic generated from the Class I Landfill proposed by ACMS, shall occur after the first year of operation of the Class I Landfill proposed by ACMS. ACMS is responsible for the full cost of this improvement.

6. As further consideration for use of the County's scale, ~~and~~ scale house (said building that is immediately adjacent to the scales and addressed as 835 CR 529, Lake Panasoffkee, FL 33538) (Exhibit "D"), and the County Property depicted in Exhibit "C", ACMS shall pay the County an annual rent of fourteen thousand (\$142,000.00) dollars ~~253.09, *** (insert the current rent amount) ***~~, adjusted annually by the March CPI of the same year. ~~If the scale and scale house are jointly used by County and ACMS, the annual rent shall be fifty percent (50%) of the above referenced annual rent, adjusted annually by the March CPI of the same year, (exclusive of the point to point connectivity existing)~~, due on the first business day of each calendar year. ACMS shall be responsible for all cleaning, maintenance, and utility costs of the scales and scale house. ACMS shall also maintain insurance coverage on

the scale and scale house building sufficient to fund the replacement cost of each in the case of total loss, and shall carry liability insurance in an amount no less than \$2,000,000.00. ACMS will indemnify the County and defend same against any actions or judgments arising from ACMS' utilization of the County's scales and scale house building. ACMS shall have the right to modify the building, and shall replace components of the building and the scales as needed to maintain operations, aesthetics and structural integrity at its own expense with notice to and consent of the County.

7. All questions, issues or disputes arising out of or under this Agreement, shall be governed by the laws of the State of Florida and State jurisdiction is hereby agreed by ACMS to ~~lie be in~~ only in Sumter County, Florida, and Federal jurisdiction is hereby agreed by ACMS to ~~lie be~~ only in the Middle District of Florida and all Federal litigation shall be filed and litigated in Tampa, Hillsborough County, Florida. In the event suit is commenced to enforce this Agreement, costs of said suit, including reasonable attorney's fees in all proceedings, trials, investigations, appearances, appeals and in any bankruptcy proceeding or administrative proceeding shall be paid to the prevailing party by the other party.
8. ~~Memorandum of Agreement entered into by and between the County and ACMS, on September 28, 2010, in all respects. The parties agree that this Agreement shall supersede and replace the CD Agreement as defined herein.~~
9. This Agreement may be assigned by ACMS ~~upon with~~ written notice ~~to~~ ~~County~~ and the consent of the County, which consent shall not be unreasonably withheld and is binding upon the parties, their successors and assigns. County consents to the future assignment if necessary to the Marion County Board of County Commissioners.
10. The effective date of this Agreement shall be May 1, 2013, or when the County relocates its citizen drop-off area, whichever comes first. ~~October 1, 2010 or Florida Department of Environmental Protection Permit Issuance Date for the ACMS Class I Landfill whichever comes later.~~ This Agreement shall be recorded in the Public Records of Sumter County, Florida and shall be binding on all successors and assigns of ACMS and the County.
11. E-Verify: system established by the U.S. Department of Homeland Security to determine the immigration and work-eligibility status of prospective employees. ACMS agrees to certify to Sumter County (County) that they are in compliance with the federal E-Verify program; this includes obtaining written certification from all subcontractors who will participate in the performance of the contract. All subcontractor certifications must be kept on file by the general contractor and made available to the state and/or the County upon request. The Sumter County Board of County Commissioners reserves the right to take action against any contractor deemed to be non-compliant; potential actions may include, but are not limited to, cancellation

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of the contract and/or suspending or debarring the contractor from performing services for the County.

12. The term of this agreement shall be twenty-five (25) years with an option to renew for five (5) additional five (5) year terms. Each party shall have the right to terminate this agreement provided one hundred eighty (180) days notice is provided to the other party of such termination.

10. —

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IN WITNESS THEREOF, the hands and seals of the parties on the date set forth above.

**ATTEST: BOARD OF COUNTY COMMISSIONERS, SUMTER COUNTY,
FLORIDA**

Deputy Clerk

By: _____
Doug Gilpin, Chairman

Approved as to form and content by the Sumter County Attorney

County Attorney

ACMS, INC.

Charles S. Dean, President